

Virginia Department of Health
Office of Licensure and Certification

Revised Effective: September 2006

The Informal Dispute Resolution Process

Introduction

In compliance with § 488.331 of Title 42 of the Code of Federal Regulations, the Informal Dispute Resolution (IDR) process* described in this guideline has been established to provide federally certified nursing facilities an opportunity to respond to survey findings and deficiency[†] citations they believe were made in error. The purpose of this informal administrative process is to give the provider one opportunity to demonstrate that a deficiency was cited in error or there has been a misjudgment of true facts. The objective of the IDR process is to avoid the imposition of unnecessary sanctions and to diminish the need for formal administrative hearings with the remedy-enforcing agency, i.e., the Centers for Medicare and Medicaid Services and/or the Virginia Department of Medical Assistance Services.

The IDR process can be used only to challenge the validity of one or more deficiencies cited as a result of a federal certification inspection. It cannot be used to impede or delay the timely submission of the facility's Plan of Correction (PoC), the enforcement "clock", the formal imposition of remedies, or to argue the citation of a state licensure deficiency.[‡] Providers may not seek a delay of any federal enforcement action on the grounds that an IDR has not been completed. The recommendations resulting from an IDR are not binding on CMS or the state survey agency.

The IDR process is not a formal evidentiary hearing. Therefore, providers are under no obligation to obtain counsel or other qualified representation. However, providers may choose to exercise that option. The decision to be represented by counsel or other qualified representative will have no bearing on the nature of the proceeding or its outcome.

* This guideline conforms to the Informal Fact Finding process as described in §§ 2.2-4019 and 2.2-4021 of the Code of Virginia.

[†] A deficiency means the facility failed to meet a participation requirement specified in the Social Security Act or in 42 CFR 483 subpart B.

[‡] Providers seeking relief for a state licensure deficiency should refer to 12 VAC 5-371-90 "Administrative Sanctions" of the Virginia Administrative Code.

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General Rules

- A. Following *receipt* of the survey report (i.e., the 2567), the provider may contact the assigned LTC supervisor to attempt to resolve any problems.

Note: Providers are advised to wait until receipt of the 2567 *before* calling the assigned LTC supervisor. Action on the deficiency report cannot be considered until *after* the report has been received by the facility.

- B. If a provider cannot resolve the problem with the supervisor, the provider may request an IDR. Providers have 10 days to file a complete and accurate IDR request. No extensions will be granted to this requirement.
- C. An IDR cannot be used if a provider:
1. Agrees that a deficiency existed, has corrected it, and wants the deficiency erased from the record; or
 2. Agrees that a deficiency exists but disagrees with the requirement.
- D. In addition, providers may not use the IDR process to impede or delay any federal certification enforcement proceedings, or to challenge any other aspect of the survey process, including:
- a. Scope and severity assessments of deficiencies with the exception of scope and severity assessments that constitute substandard quality of care or immediate jeopardy;
 - b. Remedy or remedies imposed by the enforcing agency;
 - c. Alleged failure of the survey team to comply with a requirement of the survey process;
 - d. Alleged inconsistency of the survey team in citing deficiencies among facilities; or
 - e. Alleged inadequacy or inaccuracy of the IDR process.
- E. The provider has only one opportunity per survey report to resolve disputed deficiencies. An IDR may be conducted in one of three ways: i) desk audit, ii) telephone conference call with the IDR presiding officer and OLC§ staff, or iii) face-to-face meeting with the IDR presiding officer and OLC Staff.

§ “OLC” means Office of Licensure and Certification of the Virginia Department of Health.

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The provider and OLC are each allowed one cancellation of a scheduled IDR telephone call or face-to-face meeting.

- F. Facility staff, or facility consultants, may be in attendance during a conference call or face-to-face meeting to provide support and corroborate the provider's case.
- E. Only the deficiencies detailed in the survey report and information clearly related to those deficiencies may be addressed during the IDR. Factual data, arguments, or proof only as it relates to the findings and conclusions that the provider is disputing may be submitted.
- F. There will be no opportunity for cross-examination. The rules of evidence *do not* apply. Only VDH's Adjudication Officer, as the presiding official, may ask questions.
- G. If the provider is *unsuccessful*, the deficiency will stand as recorded in the 2567 and the facility is expected to comply with its stated plan to correct the situation leading to the cited deficiency.

Note: Providers are required to submit a completed, acceptable PoC within 10 days of receipt of the 2567. Failure to do so may result in termination of the provider's federal certification agreement.

- H. If the provider is successful, the deficiency will be marked "deleted" and signed by the appropriated LTC supervisor. Enforcement actions imposed solely because of the deficiency citation may be rescinded and the scope and severity assessment may be adjusted, as applicable.
- I. A provider may request a clean (new) copy of the survey report in order to remove the deleted deficiency from the public report. However, the original, marked report remains on file and is publicly disclosable until the provider's revised plan of correction in response to the "cleaned" survey report is received.
- J. Regardless of whether the provider has already used the one opportunity for IDR, the following table indicates when another opportunity for IDR is appropriate, if requested by the provider, based on the results of a revisit or of an IDR:

Results of Revisit or of IDR	Eligibility for another IDR
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Results of Revisit or of IDR	Eligibility for another IDR
Continuation of same deficiency at revisit	Yes
New deficiency (i.e., new or changed facts, new tag) at revisit or as a result of IDR	Yes
New example of deficiency (i.e., new facts, same tag) at revisit or as a result of IDR	Yes
Different tag but same facts at revisit or as a result of IDR	No, unless the new tag constitutes SQC

NOTE: A second IDR is not offered on the existence of the deficiency or deficiencies as of the date of the first survey.

Rights of the Provider

The provider has the right to:

1. Request an IDR for a disputed deficiency;
2. Be represented by counsel or other qualified representative;
3. Receive notification of any contrary fact basis or information in the possession of OLC used in making an adverse action decision; and
4. Be informed, briefly and in writing, of the results of the resolution decision.

Procedure for requesting an IDR

- A. IDR requests must be in writing and received by OLC within 10 calendar days of the provider's receipt of the survey report. The request must be sent to:

Connie Kane, Director - LTC Services
VDH/Office of Licensure and Certification
3600 West Broad Street, Ste. 216
Richmond, VA 23230

Recording disagreement with a deficiency on the survey report *is not* a substitute for a written IDR request.

Note: The enforcement clock remains in effect for all deficiencies listed in the survey report.

- B. The written request shall include:

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1. The specific deficiency or deficiencies in dispute;
2. The reason or reasons the deficiency or the related survey finding is disputed;
3. The desired method to resolve the issue: i) desk audit, ii) telephone, or iii) face-to-face meeting; and
4. Whether counsel will represent the provider so that OLC may also arrange for counsel.

C. IDR requests that are incomplete, incorrect or invalid will be returned to the provider with written explanation of the reason for return. Failure to correct and return a complete and accurate IDR request within 5 days may result in denial of the request.

The filing date of an incorrect or incomplete IDR is based on its return date to OLC, not on its initial date of receipt as incomplete.

D. All additional written information the provider wishes considered during the face-to-face meeting should be received by OLC within 10 calendar days of filing the request for an IDR.

Note: Providers should notify the presiding officer and OLC of any material and information relating to the disputed deficiency that is discovered after the submission deadline that the provider will be presenting during the face-to-face meeting.

E. Failure to timely complete the IDR does not delay the effective date of any enforcement action against the facility.

Components of the decision letter

Upon reaching a decision about the disputed deficiency or deficiencies, the VDH Adjudication Officer will prepare a written report that includes the:

1. Authority - the statutory authority or legal basis for the IDR meeting.
2. Introduction - a summary referencing survey dates and receipt date of the IDR request.
3. Findings of fact - the relevant facts and comments considered in the decision making process.
4. Recommendations - the results of the IDR, supporting rationale, and the regulation upon which the recommendation is based. To assure completeness, each deficiency will be addressed separately in this section.

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